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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Charter Communications, Inc.’s Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules, Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, CSR-8470-Z, MB Docket No. 12-328, CS Docket No. 97-80, PP Docket No. 00-67.

Dear Ms. Dortch:

This letter is filed in response to the February 28, 2013 *ex parte* submission by Counsel Paul Glist on behalf of Charter Communications¹. The February 28 submission is the fifth letter submitted by Charter on this proceeding in the face of near unanimous opposition. In fact, the only supporter of the Charter waiver request is Beyond Broadband Technology (BBT), a supplier of security solutions with a product it would like to sell to Charter.²

Charter’s claim that, “[it] is seeking assistance to deploy a downloadable security technology that the Commission has repeatedly and expressly stated it prefers, through a limited-time waiver that the Commission previously granted to Cablevision for the very same purpose” is a distortion of fact. In reality, as the Consumer Electronics Association has clearly explained, the Commission’s now expired Cablevision waiver was intended to herald an era where a

¹ Letter from Paul Glist to Marlene H. Dortch, February 28, 2013 (“February 28 letter”).

² Submission of Beyond Broadband Technology on December 10, 2012.

nationally portable, open-standard successor to CableCARD, was available to retail devices. Relying on businesses like Cablevision to facilitate this transition is clearly a failed experiment as zero retail devices use the solution employed by Cablevision because, among other things, it is not nationally portable and therefore unsuitable for retail sales.

Charter's statement that, "[its] downloadable security system is being designed specifically to increase interoperability and portability, so that the same device can be trusted on a Charter network as well as a downloadable Cablevision network"³ highlights the fact that their approach is not nationally portable. The claim of compatibility on the Cablevision network does not support Charter's claim of increased options for equipment manufacturers. Forcing equipment manufacturers to create a unique version of hardware and software to service less than 8 million video households⁴ on a non-exclusive basis is a business model that would likely lead to zero retail support for Charter and Cablevision proprietary systems. Once again, even with Charter's pledge of continued support to CableCARD devices, equipment manufacturers would be at an even greater cost disadvantage to Charter with fewer services available to these devices as Charter enhances its network and two-way services focused on their integrated security set top boxes.

While Charter's asserts that, "The requested waiver would advance rather than undermine Commission policy,"⁵ the facts and logic lead to a different conclusion. Charter's assertion that their proposal advances Common Reliance is flawed and specious. It twists the definition of Common Reliance. The reply comments of the Consumer Electronics Association (CEA) and

³ February 28 letter at 3

⁴ Per NCTA Top 25 MSOs web site <http://www.ncta.com/Stats/TopMSOs.aspx> at Charter Communications and Cablevision 4.197 million and 3.247 million basic video subscribers as of September 2012.

⁵ February 28 letter at 7.

their subsequent four (4) letter responses articulate the notion that a successor to CableCARD is needed but the path to that successor is not through a proprietary hardware-based solution that does not support national portability of consumer electronics devices purchased at retail for attachment to all cable operators. CEA's statement is absolutely correct. In addition to a common reliance from a security perspective, the Commission should consider that retail devices need access to equivalent services on a level-playing field in-order for the Commission's vision of common reliance to be realized.

Charter's argument supporting a waiver is based on the Commission's 1995 statement that, "... a software-oriented conditional access solution **may** provide a ``common reliance" standard capable of both reducing the costs for set-top boxes and adding significantly to the options that equipment manufacturers now have in using the CableCARD."⁶ The Commission is absolutely correct that a software-oriented successor to CableCARD would ultimately benefit CE providers. However, the solution would need to be nationally portable and compatible with a high percentage of MVPD systems.

Critically, Charter has not articulated any public interest benefits justifying a waiver of a rule intended to foster a market for retail alternatives to cable-provided equipment. While Charter itself obviously would benefit from a lower cost security solution, consumers who want to use a retail alternative to Charter-provided equipment would be forced to pay a higher cost for retail equipment because that retail equipment would need to use CableCARDS while Charter's boxes would not. Charter's support for retail CableCARDS would also suffer as Charter would not be relying on CableCARDS for its own new products anymore and would shift its customers from CableCARD devices to non-CableCARD devices as Charter inevitably would make new

⁶ Federal Register Volume 70, Number 119, June 22, 2005), Rules and Regulations. Emphasis added.

services available only to non-CableCARD devices as part of an upgrade strategy. There is simply no “win” here for consumers who want a retail alternative to a cable-provided product. And Charter cannot credibly argue that it won’t migrate its systems to digital without a waiver because they have told investors that the waiver would be helpful, but not necessary, for their digital transition plans.⁷

In summary, allowing Charter to implement a lower-cost alternative to CableCARD that is limited to a small percentage of video subscribers without immediate support for retail navigation devices on a level-playing field as intended by Congress will undermine the competitive environment and further degrade the competitive marketplace for retail navigation devices. The integration ban continues to serve several important purposes —better support for CableCARD devices, economies of scale for CableCARDs, and economic incentives to develop better solutions. Ending the integration ban before a successor standard is developed would flat out undermine the market for retail navigation devices with no countervailing public interest benefits. Nothing presented in Charter’s waiver request or subsequent letters has changed the facts articulated by the near unanimous opposition that this waiver request should be denied as not being in the public interest.

Respectfully submitted,

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⁷ UBS Global Media and Communications Conference, response of Thomas M. Rutledge, president, Chief Executive Officer & Director, Charter Communications, Inc., Dec. 3, 2012.